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REMARKS

This letter is responsive to an Office Action mailed January 13, 2004 and presents an amended response to an Office Action mailed April 24, 2003 as requested by the Examiner. In the Office Action mailed April 24, 2003, the Examiner finds that:

Claims 78-81 and 89-92 are withdrawn for being directed to a non-elected species (Fig. 73).

Amendment filed 3/17/03 is rejected under 35 U.S.C. 132 for introducing new matter.

Claims 34, 35, 40, 43, 47-50, 77, 82 and 84-88 are rejected under 35 U.S.C. 101 for claiming non-statutory subject matter.

The following claims are rejected under 35 U.S.C. 102 (b):

1. Claims 34, 35, 40 and 43 for being anticipated by Dzus et al. (U.S.P. 2,485,531);
2. Claims 34, 35, 40 43 and 83-86 for being anticipated by Tennican (U.S.P. 3,168,850); and
3. Claims 34, 40, 82, 83 and 85 for being anticipated by Ferris (U.S.P. 4,865,501).

Applicant has amended claims 84-89, 91, 92 to remove multiple dependencies and added claims 94-102 depending on claim 83, thereby recovering the material sacrificed in removing multiple dependencies of claims 84-89, 91, 92.

I. Scope of elected species

Claim 34 has been amended, and includes the word "face" in place of "surface".

Webster's Encyclopedic Unabridged Dictionary Updated Version, defines "face" as:
"any of the *bounding* surfaces of a solid figure; a cube has six faces."

On this basis, claim 34 has been broadened and defines a different invention with respect to Dzus (U.S.P. 2,485,531).

Claim 49 has been amended and claim 93, (depending on claim 34) has been added, both claims thereby better defining the invention.

Claims 47, 80 and 81, are currently amended to be dependent on amended claim 34. While these claims may represent an additional species, they will be allowable when claim 34 is allowed as they will then depend upon an allowed independent generic claim that represents a "genus" claim "linking species claims" (MPEP §809.03)

As stated in MPEP §821.02: the examiner should allow the applicant "to conform all

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the claims to the non-elected species to fully embrace an allowed generic claim."

II. Old Matter presented in a Figure

The paragraph previously submitted has been withdrawn.

Figs. 72 and 73 show a fastener that with a large face contacting the bone and at least two smaller adjoining faces have small faces so that the fastener projects a small distance from the bone surface.

Original page 31, lines 2 and 3 points out one aspect of the importance of the features present in Figs. 72 and 72:

Head embodiment (H4) is *"especially useful if the surrounding tissue is very thin and devoid of muscle and/or fat, such as on the forehead or the front of the shin."*

A fastener that has a wing with a higher profile projecting from the bone may cause damage to overlying thin skin. In the shin, for example, damage from such a projection can result in ulceration, infection and amputation of the limb.

III. Statutory Subject Matter

Currently amended claims 82 and 83 are amended to include "adapted for" contacting a bone, clarifying that they do not claim an entire human being.

IV. Non-Medical Fasteners

Examiner finds that claims 34, 35, 40 43 and 83-86 are anticipated by Tennican (U.S.P. 3,168,50); and claims 34, 40, 82, 83 and 85 are anticipated by Ferris U.S.P. 4,865,501)

Figs. 72 and 73 show a fastener that with a large face contacting the bone so the fastener's force is spread over a large area, avoiding crushing the bone under the face.

Page 4, lines 18-23, of the instant application, teach the significance this adaptation:

"...compression on healing in vivo structures is believed to be most important in geriatric orthopedic surgery where the patient has soft bones which do not heal quickly,"

Neither Tennican nor Ferris teach fasteners that are adapted for bone.

Tennican shows a fastener with two thin rails. Were the fastener of Tennican used in bone, particularly soft bone, it would crush the bone directly beneath the rails due to the

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concentration of force over a relatively small area.

Ferris teaches a device having a curved facing so that were his fastener used in bone, most of the force would be unacceptably concentrated on the small contact area, causing damage in the underlying bone.

Summary

Applicant submits that the claims, as amended, are patentable and that the application is in order for allowance. Notice to this effect is respectfully awaited.

In the event that the Examiner believes that there are problems that would make it impossible to allow the claims, please use the address listed below for sending correspondence to the Applicant.

Respectfully submitted,


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